

RETURN DATE: DECEMBER 15, 2015	:	SUPERIOR COURT
	:	
JAMES MEDLYN	:	JUDICIAL DISTRICT OF NEW HAVEN
	:	
V.	:	AT NEW HAVEN
	:	
BRANFORD LAND TRUST, INC.	:	OCTOBER 23, 2015

## **COMPLAINT**

### **GENERAL ALLEGATIONS**

1. The Plaintiff James Medlyn ("The Plaintiff") is the owner of those certain parcels of land collectively known as the Medlyn Farm, located at 710 Leetes Island Road, Branford, Connecticut ("the Farm").
2. The Farm is improved with a dwelling, outbuildings, and a freshwater irrigation pond, and has at all pertinent times herein been used as a residence and working farm by the Plaintiff.
3. The Farm is on the northeast side of, and directly abuts, the Jarvis Creek estuary, a tidal estuary of Long Island Sound.
4. The Defendant Branford Land Trust, Inc. ("the Defendant") is a domestic non-stock corporation registered in the State of Connecticut, with an address of 26 School Street, Branford, Connecticut, 06405.

5. The Defendant owns dozens of parcels of land around the Town of Branford, ostensibly for the purpose of land conservation.

6. The Defendant is the record owner of certain unimproved adjoining estuarine parcel of land known as 44 Wallace Road, Parcel ID K10/000/002/012.2, and Prospect Hill Road, Parcel ID K10/000/002/012.2, located in Branford, Connecticut (collectively, “the Berm Parcel”).

7. The Defendant is currently, and has at all pertinent times, been in possession and control of the Berm Parcel, which parcel encompasses low-lying land situated downstream of the Farm and in the southwest of the Jarvis Creek estuary.

8. Until 2012, the Berm Parcel was the site of a manmade berm that stretched across the tidal estuary known as Jarvis Creek (“The Berm”).

9. The Berm was built approximately 100 years ago, for the purpose of hindering the advancing tides and storm surges from Long Island Sound. The Berm had a single open culvert at the center of the estuary channel, through which the changing tide flowed.

10. The Defendant owns and maintains a walking trail over the Berm Parcel, named the Branford Trail which, prior to 2012, tracked atop the Berm as a means of crossing the tidal estuary.

11. On or about September 2012, the Defendant dismantled and removed the Berm, and in its place erected an elevated wooden walkway above the estuary floor, leaving the Farm,

and other neighboring properties, exposed to the flood surges of Long Island Sound.

12. Upon information and belief, the removal of the Berm and the construction of the elevated walkway were undertaken at the direction of William Horne, and John Lust.

13. Upon information and belief, the Defendant did not receive the proper permits from the Connecticut Department of Energy and Environmental Protection or the Town of Branford, to destroy the Berm, and/or violated the terms and conditions of the permits they did obtain.

14. Among other violations, the Connecticut Department of Energy and Environmental Protection Permit No. LIS-GP-009, issued by the Office of Long Island Sound Programs to the Defendant authorized the destruction of the Berm to be completed by April 1, 2010. The Defendant destroyed the berm long after the permitted completion date.

15. The Plaintiff received no notification prior to the removal of the Berm, such that he could protest, or prepare the Farm for the inevitable forthcoming flooding.

16. Upon information and belief, other adjoining land owners were similarly not given notification by the Defendant of the forthcoming destruction.

17. As a result of the Defendant's dismantling of the Berm, the Farm has experienced persistent and continual flooding, and saltwater intrusion, that did not occur before the Defendant destroyed the Berm.

18. The Defendant's destruction of the Berm has destroyed several acres of the Farm's

valuable farmland that is no longer viable for crop production, as it has been saturated by saltwater.

19. The Defendant's destruction of the Berm has further destroyed a freshwater pond located on the Farm that had previously been used by the Plaintiff to irrigate crops. This pond is no longer usable for that purpose, as it is now salinated due to salt water incursions from the Long Island Sound, of the kind that had been previously prevented by the Berm.

20. The Plaintiff and his predecessors had been farming this land for in excess of 100 years, and are no longer able to do so to the same extent, since the destruction of the Berm.

21. The public roadway leading to the Farm is now regularly flooded, making access to the Farm difficult, and sometimes impossible, for both the Plaintiff and customers attempting to visit his farm stand, causing the Plaintiff to experience financial distress.

22. The Plaintiff has thus been deprived of the use and/or enjoyment of his property, and has thus been gravely damaged.

**COUNT ONE (Trespass)**

1.- 22. Paragraphs 1 through 22 of the General Allegations are hereby incorporated by reference as Paragraphs 1 through 22 of Count One, as if fully set forth herein.

23. The Plaintiff is the owner of the Farm.

24. The erosion, flooding, and saltwater intrusion was, is, and will continue to be a physical invasion of the Farm by the Defendant, infringing on the Plaintiff's exclusive possessory

interest in his Farm.

25. The Defendant's intentional removal of the Berm caused the erosion, flooding, and saltwater intrusion wrought on the Farm.

26. The Defendant intentionally and/or knowingly removed the Berm from its property.

27. The Defendant's conduct has caused the Plaintiff injury, which is continuing.

28. The Defendant's conduct constitutes an intentional invasion of the Plaintiff's exclusive possessory interest in the Plaintiffs' Farm.

29. As a result of the foregoing, the Plaintiff has suffered injury.

**COUNT TWO (Negligence)**

1-21. Paragraphs 1 through 22 of the General Allegations are hereby incorporated by reference as Paragraphs 1 through 22 of Count Two, as if fully set forth herein.

23. The Defendant had a duty to make a reasonable use of its own property so as to occasion no unnecessary damage to its neighbors, including the Plaintiff.

24. The Defendant breached its duty by:

a. Removing the Berm, which had been in place for over 100 years, and which prevented the neighboring properties from being struck by advancing tides from Long Island Sound.

b. Failing to give warning to neighboring land owners that it intended to, or had

dismantled the Berm, thus depriving them of an opportunity to object to, or take measures to protect their properties.

c. Taking action that was likely to place neighboring properties in peril.

25. The Defendant's actions were the actual and proximate cause of the harm suffered by the Plaintiff.

26. It was entirely foreseeable that the Defendant's conduct would lead to the harm suffered by the Plaintiff.

27. As a result of the Defendant's conduct, the Plaintiff has suffered substantial damages.

### **COUNT THREE (Nuisance)**

1-22. Paragraphs 1 through 22 of the General Allegations are hereby incorporated by reference as Paragraphs 1 through 22 of Count Three, as if fully set forth herein.

23. The Defendant's aforesaid intentional and/or negligent conduct facilitated the flooding seawater to erode, damage, and contaminate the Farm.

24. The Defendant's aforesaid conduct had an actual tendency to create danger and inflict injury upon persons or property and constitutes a substantial and unreasonable interference with the Plaintiff's use and enjoyment of the Farm.

25. The aforesaid interference is a continuing one; the Plaintiff experiences undue

erosion, flooding, and saltwater intrusion on a persistent basis.

26. The Defendant's aforesaid conduct, and use of its property, are unreasonable and/or unlawful.

27. As a result of the Defendant's aforesaid conduct, the Farm has been contaminated and rendered unsuitable for growing crops.

28. As a result of the foregoing, the Plaintiff has suffered and will continue to suffer damages as a result of the Defendant's conduct.

29. The Plaintiff claims damages.

**COUNT FOUR (Violation of Connecticut General Statutes §22a-16)**

1-21. Paragraphs 1 through 21 of the General Allegations are hereby incorporated by reference as Paragraphs 1 through 21 of Count Two, as if fully set forth herein.

22. C.G.S. § 22a-16 allows, among other actions, any person to maintain an action in the Superior Court for declaratory and equitable relief against another for the protection of the public trust in the air, water and other natural resources of the State of Connecticut from unreasonable pollution, impairment or destruction.

23. The Defendants caused the destruction and/or impairment of several acres of cultivated land on the Farm, and the destruction of a previously usable irrigation pond.

24. The Defendant's failure to re-establish the Berm has allowed the flooding and

destruction of the natural resources on the Farm to continue unabated.

25. The soil and surface water on the Farm is a natural resource of the State of Connecticut.

26. The Plaintiff is therefore entitled to declaratory and equitable relief imposing such conditions on the Defendants as is required to protect the public trust in the water and other natural resources of the State of Connecticut from unreasonable pollution, impairment or destruction.



Wherefore the Plaintiff claims the following relief:

1. Money damages;
2. Interest and costs;
3. A declaratory judgment, pursuant to the Environmental Protection Act (C.G.S. § 22a-16), requiring the Defendant to re-establish the Berm, and repair any damage caused to the Farm;
4. Costs, including reasonable costs for witnesses and reasonable attorney's fees pursuant to C.G.S. §22a-16 enacted through §22a-18(e);
5. A temporary and permanent injunction prohibiting and restraining the Defendant from maintaining a nuisance on its property.
6. Such other legal and equitable relief the Court deems just and proper.

THE PLAINTIFF,  
JAMES MEDLYN

BY: 

Brenton Elliott  
Jacobi, Case & Speranzini, P.C.  
57 Plains Road, Suite 2B  
Milford, CT 06461  
Tel: 203.874.7110  
Juris No. 105089

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**STATEMENT OF AMOUNT IN DEMAND**

The amount in demand, exclusive of interest and costs, is greater than FIFTEEN THOUSAND DOLLARS (\$15,000.00).

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